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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

OSVALDO ROSA,	)	Case No. CV 15-01740 DDP (FFMx)
	)	
Plaintiff,	)	<b>ORDER DENYING PLAINTIFF'S MOTION</b>
	)	<b>TO JOIN REAL PARTY OF INTEREST</b>
v.	)	<b>AND DISMISSING CASE</b>
	)	
UNITED STATES OF AMERICA,	)	[Dkt. 20, Dkt. 17]
	)	
Defendants.	)	
	)	

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On August 8, 2016, the court ordered parties to show cause why this action should not be dismissed for failure to name a valid defendant under 5 U.S.C. § 552(a)(4)(b). (See Dkt. 15.) The parties were given forty five days to comply with the order. (Id.) On September 23, one day after the deadline, the court issued an Order dismissing the action with prejudice for failure to comply with the court's August 8 Order. (Dkt. 17.) However, it now appears that Plaintiff timely submitted a response to the court's August 8 Order but the court did not receive the response until after the deadline due to a clerical error. (See Dkt. 20.) Accordingly, the court VACATES its September 23, 2016 dismissing the action. (See Dkt. 19.) Having reviewed Plaintiffs response, entitled Plaintiff's

1 Motion to Join Party of Real Interest, the court concludes that the  
2 action must nonetheless be DISMISSED.

3 Plaintiff brought this action against the United States to  
4 recover certain documents under the Freedom of Information Act. 5  
5 U.S.C. § 552 et seq. (See Dkt. 1-1.) According to Plaintiff, the  
6 action was ultimately settled pursuant to court-directed ADR. (See  
7 Dkt. 10.) Plaintiff then filed a Motion for Attorney Fees and Costs  
8 as the substantially prevailing party. (See Dkt. 12.) On June 23,  
9 2016, the United States filed a status report noting that it was  
10 never served with Plaintiff's summons and complaint and stating  
11 that the United States is not a proper party to a FOIA litigation  
12 under 5 U.S.C. § 552(a)(4)(B). (Dkt. 13.) Accordingly, the court  
13 issued its August 8 Order.

14 Plaintiff's pending filing attempts to cure the defect  
15 identified in the Court's August 8 Order by filing a Motion to Join  
16 a Real Party in Interest pursuant to Federal Rule of Civil  
17 Procedure 17(3). (See Dkt. 20.) Specifically, Plaintiff seeks to  
18 now join the Department of Justice and the Federal Bureau of  
19 Prisons as the real parties in interest. (Id.) Plaintiff has not  
20 provided, nor can the court find, any authority permitting a  
21 plaintiff to join a real party in interest solely for the purpose  
22 of recovering fees and costs where the underlying dispute has been  
23 resolved. At least one court, however, has affirmed a denial of  
24 Rule 17(3) motion where the underlying dispute was moot, albeit in  
25 a case where no fee motion was pending. See Jones v. Swanson, 512  
26 F.3d 1045, 1050 (8th Cir. 2008).

27 In addition to potential mootness concerns, permitting a  
28 plaintiff to join the real party in interest, or granting leave to

1 add a defendant, after the underlying dispute has been resolved for  
2 the sole purpose of bringing a fees motion risks unduly prejudicing  
3 a defendant. Had the proper defendant been named at the outset, the  
4 litigation might have taken a different course. The parties might  
5 have settled immediately, or perhaps the properly named defendant  
6 would have adopted a different litigation strategy. Thus, the court  
7 DENIES Plaintiff's Motion and DISMISSES the case.

8  
9 IT IS SO ORDERED.

10  
11  
12 Dated: September 29, 2016

A handwritten signature in blue ink, reading "Dean D. Pregerson". The signature is fluid and cursive, with the first name "Dean" and last name "Pregerson" clearly legible.

13 DEAN D. PREGERSON  
14 United States District Judge  
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